

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 28-930364 CSET
CONTROLLED SUBSTANCE EXCISE TAX
FOR TAX PERIODS: 1993

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ISSUE

1. Controlled Substance Excise Tax-Double Jeopardy

Authority: IC 6-7-3-5; United States Constitution Amendments 5 and 14, Bryant v. State of Indiana, 660 NE 2d 290 (Ind.1995), Indiana Tax Court Rule 4.

Taxpayer protests the assessment of Controlled Substance Excise Tax.

Statement of Facts

Taxpayer was arrested for possession of marijuana. The Indiana Department of Revenue issued a record of Jeopardy Finding, Jeopardy Assessment Notice and Demand on April 20, 1993 in a base tax amount of \$84, 676.00. Taxpayer pled guilty to possession of marijuana in 1994 and subsequently served time in jail. Taxpayer filed a protest to the assessment. A hearing on the protest was held on November 18, 1999.

Discussion

IC 6-7-3-5 imposes the Controlled Substance Excise Tax on the possession of Marijuana in the State of Indiana. Taxpayer admits that he was in possession of marijuana. The Fifth and Fourteenth Amendments of the United States Constitution prohibit placing any citizen in jeopardy twice for the same action. Jeopardy attaches when a person is put at risk of punishment. Bryant v. State of Indiana, 660 NE 2d 290 (Ind.1995). In the instant case, the Record of Jeopardy Finding, Jeopardy Assessment Notice and Demand put Taxpayer at risk of punishment or in jeopardy on April 20, 1993. Criminal jeopardy attached when Taxpayer pled guilty in 1994. Therefore the Department's jeopardy assessment was the first and constitutionally permissible jeopardy in this situation. Taxpayer further contended that the Judge in the criminal case waived the tax liability. The Judge did not, however, have authority to waive the tax liability. Only the Tax Court has jurisdiction in tax matters. Indiana Tax Court Rule 4.

Finding

Taxpayer's protest is denied.